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PERKINS COIE LLP			EXAMINER	
PATENT-SEA			ABEL JALIL, NEVEEN	
P.O. BOX 1247				
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/800,393  
Filing Date: March 12, 2004  
Appellant(s): NAIMARK, et al.

\_\_\_\_\_  
Joseph F. Brennan  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed on September 8, 2008 appealing from the Office action (non-final rejection) mailed February 6, 2008.

**1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence relied upon in the rejections of claims under appeal:

Eichstaedt et al., U.S. Patent No.6, 385,619 B1 (hereinafter Eichstaedt)

Hunt et al., U.S. Patent No. 5,893,091 (hereinafter Hunt), and

Needham, U.S. Patent No. 6,803,945 B1 (hereinafter Needham)

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-32, 34-44, 46-51, and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichstaedt et al. (U.S. Patent No. 6, 385,619 B1) in view of Hunt et al. (U.S. Patent No. 5,893,091), and further in view of Needham (U.S. Patent No. 6,803,945 B1).

As to claims 56, 71, 81, and 85, Eichstaedt et al. discloses a method of notifying a participant that a network accessible item is of current interest, the method comprising:

providing an indication of interest in one or more interest categories (See Eichstaedt et al. column 3, lines 10-20);

receiving at a first time via an alerting user an alert regarding the network accessible item (See Eichstaedt et al. Abstract; see Eichstaedt et al. column 1, lines 43-55), wherein:

the alerting user is not the participant (See Eichstaedt et al. Figure 2, "alerts" are broadcast through the Web server 58);

the alert is based on a change in the content of the network accessible item (See Eichstaedt et al. column 4, lines 45-55);

the alert indicates that the content of the network accessible item at the current time is of interest (See Eichstaedt et al. Fig. 2, element 64; see Eichstaedt et al. column 1, lines 56-62; also see Eichstaedt et al. column 3, lines 18-20);

at least one interest category is assigned to the network accessible item (See Eichstaedt et al. column 4, lines 31-39); and

providing human-perceptible notification in real time at a second time to the participant that the network accessible item is of current interest, wherein the network accessible item is associated with at least one interest category in which the participant previously indicated interest, and the second time is substantially the same as the first time (See Eichstaedt et al. column 3, lines 39-52).

Eichstaedt et al. discloses the claimed invention except for real-time alerts. However, he teaches pre-defined period of time are set for notification based on Web pages (i.e. can be real-time or current time) in column 5, lines 3-8. Eichstaedt et al. discloses the claimed invention except for processing alerts at third location separate from alerting user and participant.

Hunt et al. teaches real-time alerts and processing alerts at third location separate from alerting user and participant (See Hunt et al. column 5, lines 34-36, wherein the “first location” is read on “client”/subscriber, alerting user at a second location, see Hunt et al. column 8, lines 6-15, wherein the “second location” is read on the “timely service providers”, and processing the alert at a third location different from the first and second locations, see Hunt et al. column 5, lines 5-11, wherein “third location” is read on “server”); and

the network accessible item is associated with content that changes over time (See Hunt et al. column 11, lines 29-35);

the alert is based at least in part on a real time change, in the content of the network accessible item (See Hunt et al. column 12, lines 6-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Eichstaedt et al. by the teaching of Hunt et al. to include real-time alerts between participant at first location, alerting user at a second location, and processing the alert at a third location different from the first and second locations; and the network accessible item is associated with content that changes over time because it provides for efficient accessibility and accurate up-to-date information (See Hunt et al. column 4, lines 29-34).

The combination of Eichstaedt et al. with the teaching of Hunt et al. teaches the claimed invention but does not teach the alerting user is not the participant and both the alerting user and the participant are individuals; real time change perceived by the alerting user.

Eichstaedt et al. teaches subscription to interest categories, while Hunt et al. teaches real-time alerts of content changes associated with subscription. Now, Needham teaches capturing dynamic changes at remote webcam location and issuing related alerts.

Needham teaches the alerting user is not the participant and both the alerting user and the participant are individuals; real time change perceived by the alerting user (See column 3, lines 14-26, and column 5, lines 45-59, wherein "real-time" is inherent in motion detection, wherein "perceived" is inherent of "webcam").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Eichstaedt et al. as modified by the teaching of Needham to

the alerting user is not the participant and both the alerting user and the participant are individuals; real time change perceived by the alerting user because it provides for efficient way to monitor real-life in-frequent events as they happen as to not miss updates that may occur less frequently as others (See Needham column2, lines 8-15).

As to claims 57, 72, 82, and 86, Eichstaedt et al. as modified discloses wherein the network accessible item is identified by a Universal Resource Locator (URL) (See Eichstaedt et al. column 5, lines 58-60; where system works in an HTML and XML browser environment implies the topics can be identified by URL, also see Hunt et al. column 4, lines 60-67).

As to claims 58, 73, 74, 83, and 87-88, Eichstaedt et al. as modified discloses wherein the alert includes an interest category specified by the alerting user (See Eichstaedt et al. column 2, lines 42-48, also see Hunt et al. column 4, lines 60-67).

As to claims 59, 75, and 89, Eichstaedt et al. as modified discloses wherein the processing further includes determining an alert intensity (See Eichstaedt et al. column 3, lines 29-38, wherein “alerting intensity” reads on “numerical value”, also see Eichstaedt et al. column 3, lines 49-54).

As to claim 60, Eichstaedt et al. as modified discloses wherein the processing further includes determining an alert intensity based at least in part on the alerting user's identity (See

Eichstaedt et al. Figure 2, 62, and see Eichstaedt et al. column 3, lines 15-20, wherein “identity” reads on “profile”, also see Hunt et al. column 15, lines 20-25).

As to claims 61, and 76, Eichstaedt et al. as modified discloses further comprising storing data associated with the alert (See Eichstaedt et al. column 3, lines 7-25, also see Hunt et al. column 13, lines 10-20).

As to claim 62, Eichstaedt et al. as modified discloses wherein the processing further includes using stored data associated with a previous alert (See Eichstaedt et al. column 4, lines 4-10, also see Eichstaedt et al. column 5, lines 2-10, also see Hunt et al. column 13, lines 10-20).

As to claim 63, Eichstaedt et al. as modified discloses wherein the processing further includes determining an intensity rank for the alert, and further comprising, if the intensity rank is below a threshold, deleting stored data associated with the alert (See Eichstaedt et al. column 4, lines 50-67, wherein threshold is used to calculate the relevance of the content, wherein “if” should be replaced with “when”).

As to claim 64, Eichstaedt et al. as modified discloses wherein the processing further includes determining an intensity rank for the alert (See Eichstaedt et al. column 3, lines 49-53; where “intensity rank” is read on “weight”).



As to claim 65, Eichstaedt et al. as modified discloses wherein the processing further includes determining an intensity rank for the alert that decays exponentially with time (See Eichstaedt et al. column 4, lines 4-8).

As to claims 66 and 78, Eichstaedt et al. as modified discloses wherein the processing further includes determining an intensity rank for the alert, wherein the participant is notified about multiple network accessible items of current interest, and wherein the multiple network accessible items are selected based at least in part on intensity rank (See Eichstaedt et al. column 4, lines 31-47, also see Eichstaedt et al. column 5, lines 15-20).

As to claim 67, Eichstaedt et al. as modified discloses wherein the participant is notified about multiple network accessible items of current interest and the multiple network accessible items are ordered with respect to each other (See Eichstaedt et al. column 1, lines 46-55; where “intensity rank” is read on “interest score”).

As to claim 68, Eichstaedt et al. as modified discloses wherein the participant is notified about multiple network accessible items of current interest and the multiple network accessible items are selected based at least in part on a sensitivity level associated with the participant (See Eichstaedt et al. column 4, lines 4-28; and see Eichstaedt et al. column 4, lines 31-55, also see Eichstaedt et al. column 5, lines 2-29).

As to claim 69, Eichstaedt et al. as modified discloses further comprising displaying to the participant content associated with the network accessible item of current interest (See Eichstaedt et al. column 1, lines 41-44; also see Eichstaedt et al. column 2, lines 15-19).

As to claims 70, 80, and 84, Eichstaedt et al. as modified discloses wherein the alert includes a caption specified by the alerting user (See Hunt et al. column 4, lines 64-67, wherein “caption” reads on the “message headline”).

#### **(10) Response to Argument**

Appellant's argument that “the cited art does not teach an alert that is based at least in part on a change, perceived by an alerting user, wherein the alerting user is an individual” is fully noted but not deemed to be persuasive.

Apart from specifying both the alerting user and the participant are individual users which is not clearly supported in the specification, in fact, the specification appears to describe the alerting user as both the operator (human) and the computer generating the alert, the claims offer no detail as to what is involved in the process of alert generation or how the alerting user submits the alert, therefore, they are left open to be given the broadest reasonable interpretations in view of the prior art. It is well within the well known teachings of the database art, that a user can be a client computer. The detected change must be entered into a computer in order to be used in Applicant's claimed invention.

The argued limitations appear to be nothing more than a data entry operation made by a user at remote computerized device.

Appellant's own specification paragraph 0011 (published version) discloses:

[0011] Disseminating to a participant an indication that an item accessible by the participant via a network is of current interest is disclosed. In one embodiment, an indication that the item is of current interest is received in real time. The indication is processed. The participant is informed that the item is of current interest.

[0032] FIG. 1 is a schematic diagram illustrating a system used in one embodiment to alert users to dynamic content of interest at the time of the alert (also referred to herein as an "item of current interest"). The system 100 includes at least one alerting user 102 who accesses dynamic content associated with a uniform resource locator (URL), determines the content is of current interest, and sends an alert indicating that the URL is of current interest, as described more fully below. The system 100 also includes at least one participant 104. In one embodiment, participant 104 provides an indication of the participant's interests and receives a list of URLs providing the location of dynamic content, such as web content on the World Wide Web, that may be of interest to the participant at the time of the alert, as described more fully below. Both the alerting user 102 and the participant 104 are connected to a web server 105 via the Internet.

In addition to the paragraphs above, paragraphs 0035 and 0036 describe in further detail, the process by which the "alerting user" submits alerts and alert related information via a computer (client) that he/she is accessing which in turn connects to a Web server serving as central location for content dissemination to participants.

All of which suggests that the content specified by the alerting entity is uploaded/ processed by a computer in order for it to reach the participants on the remote end of the network which falls in line with Needham's method of uploading real time observed changes related to specified user's areas of interest to said user's website in order to for the content to be shared among other users interested in the same content as taught in column 1, lines 20-54, and column 4, lines 30-35.

Appellant's argument that "there are no teachings, suggestion or motivation to modify Eichstaedt in the manner proposed by the Examiner since it would render Eichstaedt unsatisfactory for its intended purpose" is fully noted but not deemed to be persuasive.

In general the cited art is read on Appellant's claims as follows:

Eichstaedt teaches disseminating information (publication server) to targeted recipient according to their subscriptions (notifying a participant using an alert that a current item of interest belonging to its subscribed category/Web page is available), while, Hunt was introduced as means for teaching the additional back-end operations of content aggregation (including changes to Web pages) at a centralized location collecting content changes in real time from various content providers (alerting entities) across the network. Thus, all updates to contents (including Web pages) from alerting entities are collected at the centralized server to be subsequently filtered and delivered to any participating subscribers. Finally, and per Appellant's assertions on page 14, lines 17-18, of the brief, Needham was introduced to teach content updates (including changes to Web pages) detected and recorded in real time by an alerting user's computer attached video camera and subsequently uploaded to their personalized Web page for propagation across the network including both centralized server for publication and interested peer subscribers.

It is reasonable for one of ordinary skill in the art to combine Eichstaedt's participants' subscriptions to receive content updates from a Web server with Hunt's teachings of centralized Web server collecting and categorizing real time updated content from its resources and in addition show how content sources themselves keep content relevant, up-to-date, while continually communicating it to the central server as taught by Needham. Needham is simply an

additional computer on the network providing source of content that can be published in Eichstaedt's invention.

Appellant continues to argue on page 16 of the brief that Eichstaedt's system is only directed to a single user in contrast to the instant application claimed multiple users, to which the Examiner disagrees since Eichstaedt's invention is practiced within networked environment providing Web access which is well known to be ubiquitous and available to as many users as specified and as such Eichstaedt can reasonably be modified to include additional user / subscriber (both as a an alerting user and participant).

Therefore, the proposed combination in OA does not change Eichstaedt's mode of operation instead it complements and enhances it with additional back-end features including content source functionality. One of ordinary skill in the art would have been motivated to do so as outlined in the rejection found above.

Appellant's argument that "the Examiner has not clearly articulated reasons why claims 56-89 would have been obvious, and applicant notes that certain featured referred to by the Examiner (e.g. first location, second location...etc.) are not found in any of the claims" is fully noted but not deemed to be persuasive.

The Examiner has clearly given a motivation statement in the OA as outlined above and the reference made to first location, second location...etc. are merely an interpretation of Appellant's claimed invention as seen embodied by Appellant's Figure 1. First location is meant to be the alerting user's computer, second location is the content server, and third location is the participant's computer.

Appellant continues to argue on page 19 of the brief that the motivation statement is nothing more than inexpressible hindsight, to which the Examiner disagrees.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Neveen Abel-Jalil

November 21, 2008

/Neeven Abel-Jalil/

Primary Examiner, Art Unit 2165

Conferees:

/John R. Cottingham/

Supervisory Patent Examiner, Art Unit 2167

Art Unit: 2165

for

Christian Chace

/Eddie C. Lee/

Supervisory Patent Examiner, TC 2100